

## CHAPTER 3 ADMINISTRATIVE HEARINGS

[Prior to 7/13/88, see Secretary of State(750), Ch 8]

**721—3.1(17A) Scope.** Iowa Code chapter 17A and the rules contained in this chapter govern the practice, procedure and conduct of contested case proceedings, including proceedings related to the grant, denial, revocation, or renewal of any license issued by the agency where such action is required by constitution or statute to be preceded by notice and opportunity for an evidentiary hearing.

**721—3.2(17A) Definitions.** As used in these rules:

“*Agency*” means the secretary of state.

“*Contested case*” means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by an agency after an opportunity for an evidentiary hearing.

“*License*” means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

“*Presiding officer*” means the person assigned to hear and decide the contested case whether that individual is the agency director or an administrative law judge appointed according to Iowa Code chapter 17A.

“*Proceeding*” includes licensing, rule making, declaratory ruling, contested cases, review, and formal or informal procedures allowed by law.

**721—3.3(17A) General information.**

**3.3(1) Legal representation.** Individuals, at their own expense, may be represented by counsel at contested case hearings. If the individual is not represented by counsel, the presiding officer may meet with the individual to explain the individual’s rights and responsibilities in the contested case process.

**3.3(2) Prehearing conference.** At the discretion of the presiding officer or on the motion of any party to the contested case, a prehearing conference may be held for the purpose of settlement of the case, facilitating the hearing, or facilitating the decision of the presiding officer. Notice shall be given to the parties of the time and place of the conference and its purpose. A record shall be made of all agreements and actions resulting from any conference. The presiding officer may issue an order setting forth all agreements and actions.

**3.3(3) Informal settlement.** Individuals are encouraged to meet informally with agency representatives to resolve issues that might result in a contested case. If a settlement is reached, it shall be set out in writing. The agreement, when signed by the individual and the appropriate representative of the agency, is binding on the individual and the agency.

**3.3(4) Waiver.** Any of the rights established in Iowa Code chapter 17A or these rules may be waived by the individual.

**3.3(5) Ex parte communications.** No person shall engage in ex parte communication prohibited by Iowa Code subsections 17A.17(1) and 17A.17(2). The recipient of any prohibited ex parte communication shall submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the contested case proceeding. When the presiding officer is the recipient of such communication, an order shall be entered placing it in the record. Any party shall be given an opportunity to respond to statements made in such a communication.

**721—3.4(17A) Commencing the contested case.** A request for a hearing shall be submitted within 15 days from the individual’s receipt of the agency’s intended action and shall be submitted in writing by personal service or by certified mail, return receipt requested, to the Secretary of State, Corporations Division, Hoover State Office Building, Des Moines, Iowa 50319. A request for a hearing shall be

considered filed on the date of personal service, or on the date of the United States Postal Service postmark.

**721—3.5(17A) Notice of hearing.** Notice of the hearing shall be prepared by the presiding officer and mailed by certified mail, return receipt requested, to the person requesting the hearing at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties.

The notice shall include:

1. A statement of time, place, and nature of the hearing.
2. A statement of the legal authority under which the hearing is to be held.
3. A reference to the pertinent sections of law or administrative rules.
4. A brief statement of the issues.

**721—3.6(17A) Contested case hearing procedures.**

**3.6(1) Subpoenas.** When necessary for the full presentation of a contested case, the presiding officer shall issue subpoenas for the attendance and testimony of witnesses and for the production of written or recorded materials of any kind which are relevant or material to any matter at issue in the hearing. Any individual who desires the issuance of a subpoena shall file a request with the presiding officer, designating the witnesses or documents to be produced and describing their address or location. When prepared by the presiding officer, the subpoena shall be returned to the requesting party for service; and the requesting party shall bear all costs associated with serving the subpoenas. Service may be made in any manner allowed by law, but must be performed prior to the hearing date.

**3.6(2) Rules of evidence.** The presiding officer is not bound to follow the technical common law rules of evidence. A finding shall be based upon the kind of evidence which reasonably prudent persons are accustomed to rely upon for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The presiding officer may give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form. Any party intending to submit evidence in written verified form, shall notify any other individuals at least seven working days prior to the hearing so that any objections can be filed with the presiding officer. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

**3.6(3) Discovery.** Discovery procedures may be utilized as permitted under the procedures of the Iowa rules of civil procedure. Depositions taken in accordance with the Iowa rules of civil procedure may be used as evidence with the approval of the presiding officer.

**3.6(4) Presentation of testimony and evidence.** In the hearing, each party shall have the right to present evidence and the testimony of witnesses, who shall testify under oath, and to cross-examine the witnesses of another individual. A person who has submitted testimony in written form is subject to cross-examination if that person is available. Opportunity shall be afforded to each party for redirect and recross-examination, and to present evidence and testimony as rebuttal to evidence presented by another party. Witnesses shall be subject to examination by the presiding officer. The presiding officer may, upon the motion of any party or its own motion, order the sequestration of witnesses.

**3.6(5) Briefs.** The presiding officer may order the filing of briefs on any of the issues presented in the contested case.

**3.6(6) Record.** The record in a contested case shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

**3.6(7) *Failure to appear.*** If any party fails to appear at the hearing and no continuance has been granted, the presiding officer may proceed with the hearing and render a decision in the absence of the complainant.

**3.6(8) *Proceedings recorded and open to the public.*** The hearing shall be recorded by tape recording. An individual may demand that the hearing be recorded by a certified shorthand reporter, but that party must bear all costs associated with the shorthand reporter. The record of hearing or a transcript shall be filed with the authority and maintained for a period of five years.

**721—3.7(17A) Presiding officer.** The presiding officer shall:

1. Open the record and receive appearances.
2. Administer oaths and issue subpoenas.
3. Enter the notice of hearing into the record.
4. Receive testimony and exhibits presented by the parties.
5. Interrogate witnesses.
6. Rule on objections and motions.
7. Close the hearing.
8. Issue a decision containing findings of facts and conclusions of law.

**721—3.8(17A) Decisions.** When the presiding officer is the agency director, the decision is the final decision of the agency. When the presiding officer is an administrative law judge, a proposed decision is issued.

**3.8(1)** A proposed decision automatically becomes the final decision of the agency unless an individual appeals to the agency or the agency moves to review the proposed decision within 20 days of the issuance of the proposed decision.

**3.8(2)** On appeal the agency has all the authority of the presiding officer and may uphold the proposed decision or reverse it, in whole or in part, or remand the case to the presiding officer.

**3.8(3)** An intra-agency review is limited to the evidence and issues presented at the contested case hearing. The agency may remand the case to the presiding officer when compelling reasons justify the taking of new evidence or the consideration of new issues.

**3.8(4)** A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated, and must set forth the action to be taken or the disposition of the case. Parties shall be promptly notified of each proposed or final decision or order by certified mail, return receipt requested.

**721—3.9(17A) Request for rehearing.** Any party may file an application for rehearing, stating the specific grounds and the relief sought, within 20 days after the issuance of any final decision by the agency in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

**721—3.10(17A) Judicial review.** A party who is aggrieved or adversely affected by a final decision of the agency may seek judicial review of that decision as provided in Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 17A.3.

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